IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.778 of 2005.
Date of Decision: November 03, 2006.

Tejinder Singh

....Appellant

through
Mr. S.S.Rangi, Advocate

Versus

Harjit Singh & Ors.

...**Respondent**

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This Regular Second Appeal has been preferred by the defendant against whom a suit for permanent and prohibitory injunction has been decreed by both the Courts after holding that their exists a Pahi in Khasra No.725 and, thus, he can not obstruct the respondent-plaintiffs from passing through the same to reach their fields.

From the impugned judgment, it is apparent that even the appellant in his written statement did not dispute the fact that there used to be a Pahi in Khasra No.725. He, however, came up with a plea that there is a Rajbah which runs abutting the Pahi and while constructing the said Rajbah with pucca bricks, the Canal Authorities had merged the said Pahi with Rajbah and as such the said Pahi no longer exists at the spot. Both the

Courts below, after relying upon copies of Jamabandi (Ex.P1), Masawi (Ex.P2) and other evidence on record, found as a matter of fact that the Pahi in Khasra No.725 is fully descripted in the revenue record and still exists at the spot.

In view of the fact that the appellant himself did not dispute the existence of Pahi at one point of time, the onus was upon him to show that the Pahi was sub-merged with the Rajbah when the latter was constructed with pucca bricks. No such evidence has been led by the appellant.

Learned counsel for the appellant vehemently contends that there is a demarcation report (Ex.D2) submitted by Lakhbir Singh, Kanungo, who also appeared in the witness box and as per the said report, the Pahi is not in existence at the spot. The aforesaid contention has been duly considered by the learned first Appellate Court. It has been held that the alleged demarcation, on the basis of which report (Ex.D2) was submitted, was carried out prior to the filing of the civil suit by the respondent-plaintiffs. The afore-said finding of fact is not disputed by learned counsel for the appellant also.

In this view of the matter, and having regard to the fact that both the Courts below have concurrently held that there exists a Pahi and it being a pure finding of fact which does not give rise to any substantial question of law requiring consideration by this Court, I do not find any merit in this appeal. Dismissed.

November 03, 2006. **(SURYA KANT)**
dinesh **JUDGE**